



# Draft Determination

Application for revocation of authorisation AA1000453 and the substitution of authorisation AA1000610  
lodged by  
Goulburn Valley and North East Waste and Resource Recovery Groups  
in respect of  
joint procurement of certain waste and resource recovery services

Date 30 June 2022

Commissioners: Keogh  
Rickard  
Brakey

## Summary

The ACCC proposes to grant re-authorisation to enable two regional Victorian waste and resource recovery groups, and the local councils and alpine resort management boards they represent, to jointly procure, negotiate and enter into contracts for certain waste and resource recovery services.

One of the groups – the Goulburn Valley Waste and Resource Recovery Group (and eight of the councils it represents) was previously granted authorisation for these arrangements on 26 February 2020. The current application seeks to replace that authorisation with a new one that includes the North East Waste and Resource Recovery Group (and the seven local councils and four alpine resort management boards it represents), but no longer includes two New South Wales councils who were previously authorised.

The relevant waste and resource recovery services are the same as those covered by the previous authorisation. The Goulburn Valley Waste and Resource Recovery Group did not commence the joint procurement arrangements under the previous authorisation.

The ACCC considers the arrangements are likely to result in public benefits including environmental benefits, reduced transaction costs, improved efficiencies and investment, and increased competition. The ACCC considers that the arrangements are likely to result in minimal public detriment.

On 18 May 2022, the ACCC granted interim authorisation, to enable the Applicants to commence the initial procurement processes. Interim authorisation does not extend to entering into contracts for kerbside waste and recovery services.

The ACCC proposes to grant re-authorisation until 1 July 2041.

The ACCC invites submissions in relation to this draft determination before making its final decision.

### 1. The application for revocation and substitution

- 1.1. On 21 April 2021, Goulburn Valley and North East Waste and Resource Recovery Groups, on behalf of themselves and various local councils and alpine resort management boards they represent, lodged with the Australian Competition and Consumer Commission (the **ACCC**) an application to revoke authorisation AA1000453 and substitute authorisation AA1000610 for the one revoked (referred to as re-authorisation). The Applicants are seeking re-authorisation to jointly procure, negotiate and enter into contracts for certain waste and resource recovery services, until 1 July 2041.
- 1.2. This application for re-authorisation AA1000610 was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). The ACCC may grant authorisation, which provides businesses with legal protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in the Act, but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.3. The Applicants also requested interim authorisation to enable them to commence the initial procurement processes while the ACCC is considering the substantive application. On 18 May 2022, the ACCC granted interim authorisation under

subsection 91(2) of the Act. Interim authorisation remains in place and does not extend to enabling the Applicants to enter into contracts for kerbside waste and recovery services.<sup>1</sup>

## The Applicants

1.4. The Applicants are:

- Goulburn Valley Waste and Resource Recovery Group, on behalf of itself and the local councils of City of Greater Shepparton, Moira Shire, Campaspe Shire, Strathbogie Shire, Mitchell Shire, Murrindindi Shire, and Murray River Shire; and
- North East Waste and Resource Recovery Group, on behalf of itself and the local councils of Alpine Shire, Benalla Rural City Council, City of Wodonga, Indigo Shire, Towong Shire, Rural City of Wangaratta, and Mansfield Shire; and alpine resort management boards of Falls Creek Alpine Resort Management Board, Southern Alpine Resort Management Board, Mount Buller and Mount Stirling Resort Management Board, and Mount Hotham Resort Management Board.

(together, the **Applicants**).

- 1.5. Goulburn Valley and North East Waste and Resource Recovery Groups are both Victorian statutory authorities established under the *Environment Protection Act 1970* (Vic) and continued under section 382 of the *Environment Protection Act 2017* (Vic). Both groups are responsible for facilitating efficient procurement of waste and resource recovery infrastructure and services through the collective procurement of waste management facilities and waste and resource recovery services. They work with their respective councils and management boards to coordinate and facilitate the efficient procurement of waste and resource recovery services.
- 1.6. The participating councils comprise statutory local government authorities established under the *Local Government Act 1989* (Vic), as well as four alpine resort management boards established under the *Alpine Resorts (Management) Act 1997* (Vic). Each participating council and management board is responsible for conducting essential waste and resource recovery services within its respective municipal district or resort.
- 1.7. Figures 1 and 2 show the location of the participating councils.
- 1.8. The Goulburn Valley region has a total area of more than 21,000 square kilometres, a population of approximately 195,000, and includes the population centre of Shepparton (population 49,000).<sup>2</sup>

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<sup>1</sup> The interim decision is available [here](#).

<sup>2</sup> Australian Bureau of Statistics Census data, 2016.

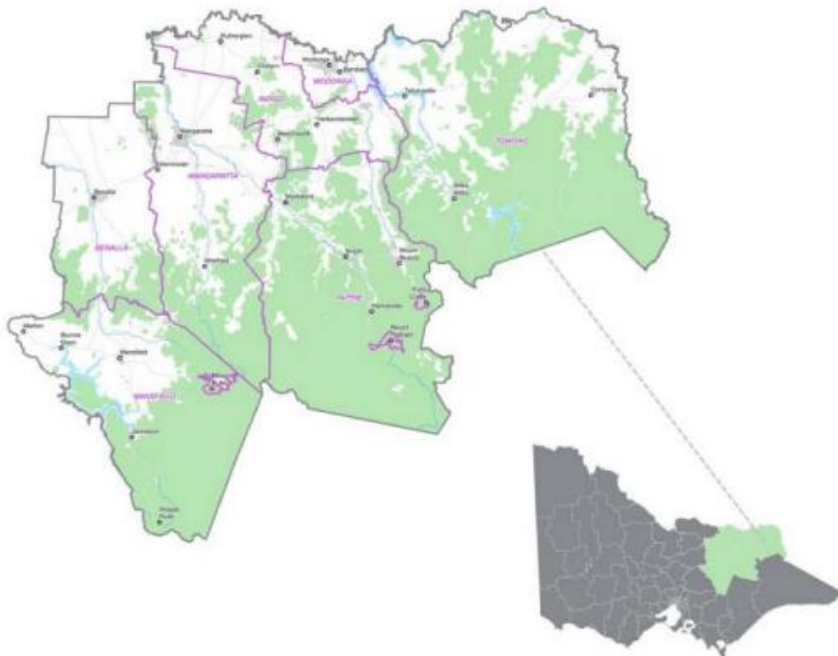
**Figure 1 – Map of the Goulburn Valley region**



Source: Sustainability Victoria

1.9. The North East region has a total area of just under 25,000 square kilometres, a population of less than 120,000, and includes the population centres of Wodonga (population 35,000), and Wangaratta (population 19,000).<sup>3</sup>

**Figure 2 – Map of the North East region**



Source: North East Waste and Resource Recovery Implementation Plan 2017

<sup>3</sup> Australian Bureau of Statistics Census data, 2016.

- 1.10. From 1 July 2022, Goulburn Valley and North East Waste and Resource Recovery Groups, along with all statutory waste and resource recovery groups in Victoria, will be abolished under the *Circular Economy (Waste Reduction and Recycling) Act 2021* (Vic). Recycling Victoria will take over the responsibilities for providing leadership, stewardship and oversight of waste, recycling or resource recovery services and to support the development of a circular economy and will execute these on a state-wide, rather than regional, basis.
- 1.11. The Applicants advise that, upon waste and resource recovery groups becoming abolished, Recycling Victoria will automatically enjoy the statutory protection of any interim or substituted authorisation granted by the ACCC in favour of the Applicants.

## The Conduct

- 1.12. The Applicants are seeking re-authorisation to jointly procure waste and resource recovery services. Specifically, to:
- (a) enter into arrangements to jointly call for tenders for the supply of defined waste services being one or more of the Relevant Services (defined at paragraph 1.10 below), and
  - (b) where agreed among the Applicants, to enter into and give effect to contracts, arrangements or understandings regarding the joint procurement from time to time of some or all of the Relevant Services.

(the **Conduct**).

- 1.13. The waste services to which the arrangements are proposed to relate are:
- domestic kerbside residual waste, recyclables and organic waste collection and transport
  - domestic kerbside recyclables acceptance and sorting
  - domestic kerbside organic waste (including food organics and/or green waste) acceptance and processing
  - residual waste disposal
  - resource recovery centre domestic residual waste and recyclables collection and transport
  - supply of mobile kerbside bins
  - supply of organics kitchen caddies and liners
  - landfill and resource recovery data recording systems
  - landfill management services, and
  - collection, processing, and/or disposal of specific material streams that are disposed of, aggregated at and collected from council-operated resource recovery centres (including in relation to e-waste, clothing and textiles, mattresses and soft furnishings, tyres, polystyrene, rigid and soft film plastics, empty oil containers, de-gassing of whitegoods and gas cylinders, waste automotive oil, the drumMUSTER program, scrap steel, cooking oil, green

waste mulching, fluorescent lighting, aggregates and brick, and automotive batteries).

(the **Relevant Services**)

## 2. Background

### Existing authorisations

- 2.1. The current application seeks to revoke authorisation AA1000453, granted by the ACCC on 26 February 2020 until 1 July 2036, and to substitute it with a new authorisation. Authorisation AA1000453 covers the same conduct and the same waste services as the current application, but removes two New South Wales councils which are not seeking to be part of the current application for re-authorisation, and include the North East Waste and Resource Recovery Group and its associated councils and management boards.
- 2.2. The Applicants submit that the conduct in authorisation AA1000453 was never engaged in, due to significant changes and uncertainty as a result of the China National Sword<sup>4</sup> policies and the extension of procurement exemptions granted to certain councils under section 186 of the Local Government Act 1989 (Vic). The Applicants advise that, due to greater certainty in the global and regulatory context, they now anticipate being able to engage in the conduct.
- 2.3. The North East Waste and Resource Recovery Group, along with many of the councils and alpine resort management boards it represents, are also party to authorisation A91551, granted by the ACCC on 2 February 2017 until 24 February 2028. Authorisation A91551 was granted to allow the parties to jointly tender and negotiate for the procurement of various waste services (but excluding kerbside collection services). Collaborative tenders and procurements have been undertaken under this authorisation including for the collection of scrap metals, tyres and e-waste, green waste shedding, mattress and soft furnishing recycling, and de-gassing and recycling of gas bottles. The Applicants submit that, while authorisation A91551 applies to some of the same services, it does not include kerbside collection services, which are a major component of the current application for re-authorisation.

### Waste and resource recovery in the Goulburn Valley and North East regions

- 2.4. In 2018-19, the total volume of kerbside waste collected across Victoria was approximately 2.19 million tonnes, comprising:
  - 1.2 million tonnes – residual waste
  - 565,000 tonnes – commingled recyclables and
  - 266,000 tonnes – organic waste.<sup>5</sup>
- 2.5. The combined annual volume of kerbside waste collected by the participating councils in 2018-19 was around 117,000 tonnes (comprising 69,570 tonnes in the Goulburn

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<sup>4</sup> In January, 2018, China introduced its National Sword Policy, which limits the import of low-quality mixed recyclables, including paper and plastic. Source: <https://www.environment.vic.gov.au/sustainability/victorians-urged-to-keep-recycling>

<sup>5</sup> Source: Sustainability Victoria.

Valley region and 47,740 tonnes in the North East region).<sup>6</sup> This represents around 5 per cent of Victoria's combined kerbside waste volumes in year.

### 3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including major suppliers, relevant industry associations or peak bodies, state and federal government and relevant regulatory bodies.<sup>7</sup>
- 3.3. The ACCC did not receive any submissions from interested parties in relation to the application.
- 3.4. Public submissions by the Applicants are on the Public Register for this matter.<sup>8</sup>

### 4. ACCC assessment

- 4.1. The Applicants have sought re-authorisation for Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 of the Act. Consistent with subsections 90(7) and 90(8) of the Act,<sup>9</sup> the ACCC must not grant re-authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (authorisation test).

#### Relevant areas of competition

- 4.2. The Applicants submit that the relevant area of competition likely to be impacted is at minimum the supply and acquisition of services relating to the collection, acceptance, sorting, processing and/or disposing of residual waste, recyclables and organic waste in the Goulburn Valley and North East regions and adjacent areas (including neighbouring New South Wales councils).
- 4.3. The ACCC considers that the relevant areas of competition are likely to be those for the acquisition and supply of the various waste and resource recovery services (listed at paragraph 1.10) in and adjacent to the Goulburn Valley and North East Victorian regions.

#### Future with and without the Conduct

- 4.4. In applying the authorisation test, the ACCC compares the likely future with the Conduct that is the subject of the authorisation to the likely future in which the Conduct does not occur.
- 4.5. The Applicants submit that, should the Conduct not be re-authorised, it is possible that:

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<sup>6</sup> Source: Sustainability Victoria.

<sup>7</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

<sup>8</sup> <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/goulburn-valley-waste-and-resource-recovery-group-and-north-east-waste-and-resource-recovery-group>.

<sup>9</sup> See subsection 91C(7).



- councils may individually develop tenders and negotiate for the supply of the relevant services, or
- councils already authorised under AA1000453 and A91585 may continue to jointly procure in accordance with the terms of these authorisations, or
- councils may structure collaborative procurement to rely on the joint venture and collective acquisition exceptions to the Act.

4.6. The ACCC considers that, absent the Conduct, the participating councils would consider individually tendering and contracting for the relevant waste and resource recovery services.

## Public benefits

4.7. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

*...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*<sup>10</sup>

4.8. The Applicants submit that the Conduct is likely to result in significant and sustained public benefits including in the form of transaction and other cost savings, efficiencies and economies of scale, enhanced competition, improved services, environmental benefits, and the potential inclusion of small service providers in the tender process.

4.9. The ACCC has considered the following public benefits:

- environmental benefits
- reduced transaction costs
- improved efficiencies and investment, and
- increased competition.

## Environmental benefits

4.10. The Applicants submit that they expect the joint procurement to deliver a range of environmental benefits. Increased efficiency in the collection, aggregation and disposal of waste materials is likely to, in turn, result in reduce greenhouse gas emissions from the transportation of waste and from energy used for facility operations. Joint procurement is also likely to result in improved resource recovery rates.

4.11. The ACCC considers the Proposed Conduct is likely to result in public benefits from improved environmental outcomes.

## Reduced transaction costs

4.12. The Applicants submit the Conduct is likely to result in significant cost savings that would not be achieved if each participating council were to conduct its own procurement process. In particular, administrative cost savings will arise due to

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10 Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.



avoiding unnecessary duplication of work in the preparation of tender documents, advertising and contract preparation; technical expertise and specialist knowledge can be used collectively; and ongoing contract management processes can be streamlined.

- 4.13. The ACCC considers the Conduct is likely to result in transaction cost savings for both the Applicants and service providers, through central coordination of the tender and negotiation processes, when compared to a situation where the councils each run their own separate tender process for each of the relevant services.

### **Improved efficiencies and investment**

- 4.14. The Applicants submit that the aggregation of the participating councils' waste volumes will create efficiencies and economies of scale that in turn will encourage innovation and new investments by service providers. The aggregation of waste volumes is likely to allow underutilised facilities to be used more efficiently, and may encourage service providers to invest in new technologies.

- 4.15. The ACCC accepts that aggregation of waste volumes through joint procurement is likely to result in public benefits by facilitating service providers' realisation of operational efficiencies, making services financially viable, and/or reducing the risks associated with investment in upgraded or new facilities and technologies.

### **Increased competition**

- 4.16. The Applicants submit that joint procurement is likely to increase competition for the provision of waste and resource recovery services in the Goulburn Valley and North East regions, because the joint process is likely to attract interest from service providers who may not have entered the market previously.

- 4.17. The ACCC considers that the Conduct may result in a public benefit through increasing competition, by offering prospective tenderers a more substantial volume of waste for collection and/or processing, which may result in existing or new service providers competing more vigorously to win the service contracts.

### **ACCC conclusion on public benefit**

- 4.18. The ACCC considers that the Conduct is likely to result in public benefits from:

- environmental benefits
- transaction cost savings
- improved efficiencies and investments, and
- increased competition.

- 4.19. These benefits may in turn result in lower rates for ratepayers, improvements in service delivery for ratepayers, and enhanced ability to respond to statutory objectives and significant factors impacting the market.

### **Public detriments**

- 4.20. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>11</sup>*

4.21. The Applicants submit that the Conduct will not result in any discernible public detriment, because:

- the tender process will be open and transparent
- participation will be voluntary for participating councils and for service providers (who may choose to deal with participating councils on a purely bilateral basis if they choose)
- the proposed process affords service providers with flexibility as they may choose to tender for one or multiple participating councils, and for one or more Relevant Services
- it is currently anticipated that any joint decisions regarding allocation of volumes would be made on an ad hoc basis and would have no significant anti-competitive effects.

4.22. The ACCC considers that public detriments may arise as a result of joint procurement arrangements such as these where the group comprises such a substantial portion of the market that it reduces competition between providers of the relevant waste and resource recovery services – that is, by limiting the availability of business for which service providers compete.

4.23. However, the ACCC considers that the Conduct is likely to result in minimal public detriment for the following reasons:

- the Applicants advise that each of the Relevant Services will likely have a separate tender process, rather than one single process for the entire suite of waste services covered by the authorisation application. Separate tender processes for each of the relevant waste and resource recovery services facilitates service providers, including smaller providers, being able to tender for one or more multiple participating councils and for one or more waste streams
- the participating councils' combined annual kerbside waste volumes (comprising domestic residual, recyclables and organics) comprises around 5 per cent of total kerbside waste volumes collected in Victoria; and
- the Conduct is voluntary for both service providers and the participating councils.

## Balance of public benefit and detriment

4.24. For the reasons outlined in this draft determination, the ACCC is satisfied that the Conduct is likely to result in a public benefit and that this public benefit would outweigh the likely minimal detriment to the public from the Conduct.

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<sup>11</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

## Length of authorisation

- 4.25. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>12</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.26. In this instance, the Applicants seek re-authorisation until 1 July 2041, comprising:
- approximately five years to conduct the joint procurement process for some or all of the Relevant Services at various times, and
  - a maximum 15-year operating term for each of the contracts entered into.
- 4.27. The Applicants submit that a 15-year contract term is preferred by most service providers because it more easily allows investment in upgraded or new infrastructure.
- 4.28. The ACCC recognises that joint council tendering projects to support significant infrastructure development commonly require long-term contracts to support investment and enable contractors to have a sufficient return to underwrite investment. Therefore, the ACCC considers that the requested term of authorisation is likely to support the Conduct to achieve this outcome and the associated public benefits.
- 4.29. Additionally, given the staggered joint procurement processes, and the ACCC's view about the likely public benefits and minimal public detriments likely to result from the conduct, the ACCC proposes to grant authorisation until 1 July 2041.

## 5. Draft determination

### The application

- 5.1. On 21 April 2022, the Applicants lodged an application to revoke authorisation AA1000453 and substitute authorisation AA1000610 for the one revoked (referred to as re-authorisation). This application for re-authorisation AA1000610 was made under subsection 91C(1) of the Act.
- 5.2. The Applicants seek re-authorisation to engage in the Conduct, as defined at paragraph 1.10 above.
- 5.3. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

### The authorisation test

- 5.4. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Conduct.
- 5.5. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Conduct would be likely to result in a benefit to the public and

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<sup>12</sup> Subsection 91(1)

the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Conduct, including any lessening of competition.

5.6. Accordingly, the ACCC proposes to grant re-authorisation.

### Conduct which the ACCC proposes to authorise

5.7. The ACCC proposes to revoke authorisation AA1000453 and grant authorisation AA1000610 in substitution. Authorisation AA1000610 is granted to enable the Applicants to jointly procure waste and resource recovery services as described in paragraph 1.10 and defined as the Conduct.

5.8. The Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.

5.9. The ACCC proposes to grant authorisation AA1000610 until 1 July 2041.

5.10. This draft determination is made on 30 June 2022.

## 6. Next steps

6.1. The ACCC now invites submissions in response to this draft determination. In addition, consistent with section 90A of the Act, the Applicants or an interested party may request that the ACCC hold a conference to discuss the draft determination.